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7 **UNITED STATES DISTRICT COURT**  
8 **WESTERN DISTRICT OF WASHINGTON**  
9 **TACOMA DIVISION**

10 WILL CO. LTD. a limited liability company  
11 organized under the laws of Japan,  
12 Plaintiff,

13 vs.

14 KAM KEUNG FUNG, aka 馮錦強, aka  
15 FUNG KAM KEUNG, aka FUNG  
16 KAMKEUNG, aka KUENG FUNG, aka  
17 KEUNG KAM FUNG, aka KAM-KEUNG  
18 FUNG, aka KEVIN FUNG, an individual;  
19 FELLOW SHINE GROUP LIMITED, a  
20 foreign company, and DOES 1-20, d/b/a  
21 AVGLE.COM,

Case No. 3:20-cv-05666-RSL

22 **DECLARATION OF KAM KEUNG**  
23 **FUNG, IN SUPPORT OF DEFENDANTS'**  
24 **REPLY IN SUPPORT OF MOTION TO**  
**DISMISS**

25 **DECLARATION OF KAM KEUNG FUNG, IN SUPPORT OF DEFENDANTS'**  
26 **REPLY IN SUPPORT OF MOTION TO DISMISS**

27 I, Kam Keung Fung, declare and state as follows:

28 1. My name is Kam Keung Fung. I am over the age of 18 years. I am a software  
29 developer and I live and work in Hong Kong. I am personally named as a defendant in the above  
30 referenced case. I make this declaration based upon personal knowledge. All statements  
31 contained in this declaration are true and correct to the best of my knowledge. If called as a  
32 witness, I could and would testify as to the facts set forth in this declaration.  
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34

2. I have never attempted to utilize a United States based IP addresses to access a Cloudflare account for avgle.com, either on my own behalf or on the behalf of Fellow Shine Group Limited (“FSG”).

3. To the best of my knowledge, Cloudflare does not offer the option to make adjustments to CDN functionality on a country-specific basis.

4. I have not selected nor directed the location of Cloudflare's servers in respect to Avgle.com.

5. Even when FSG had a paid account with Cloudflare, I did not on behalf of FSG, (nor could I have) selectively enabled Cloudflare's CDN servers in specific countries as this was not an option provided by Cloudflare.

6. Attached to this declaration as Exhibit 1 are true and accurate copies of email communications between myself and Jason Tucker, who wrote to me on behalf of the Plaintiff.

[Signature Page Follows]

1 I declare under penalty of perjury that the foregoing facts are true and correct.

2 Executed on January 28, 2021.

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Kam Keung Fung

## **EXHIBIT 1**



Keung Fung <kfung@awesapp.com>

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**FW: WILL CO Ltd v. Avgle.com, et. al.**

9 messages

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**Jason Tucker** <jason@battleshipstance.com>  
To: kfung@awesapp.com, kfung426@me.com  
Cc: Spencer Freeman <sfreeman@freemanlawfirm.org>

Wed, Aug 26, 2020 at 3:35 AM

Hello Mr. Fung,

Attached is a copy of the complaint filed by Will Co Ltd. ("Will") in US Federal Court against AVGLE.com and its owners and operators.

Subpoenas have been issued to your service providers. Upon receipt of the answers, it is our client's intent to amend the complaint and name all of the parties involved. We are preparing service pursuant to the Hague Convention for the certain operators in the UK and People's Republic of China. There is a specific department that deals with the type of content in this case.

Takedown Notices were sent to your agent in April, May, June, and July. At various dates and times your agent has represented that the content was removed. In other instances, a banner on the site states that the content was removed from the website. Your agent has spent a considerable amount of time explaining to me how the content was no longer on the site. I have shared that this is simply not true.

As of the date of this email, the infringed links your agent claims are removed are up and visible on the website at the exact links listed in the April, May, June, and July notices. If you click on the links and play the video you will see that they are live. If you need video evidence samples, please let me know. In certain instances, there is user information associated with the video. In other instances, there is no user information. You allow anonymous uploads and have no repeat infringer policy. Your agent claims that AVGLE is a compliant website. What we have seen and documented on the site shows this is not true. This is not a full list of the claims.

By any measure of any law, almost anywhere in the world, you have infringed Will's content. Will wants proper compensation for the damage.

In the lawsuit, Will is asking the court to award US\$7.5M plus legal fees. Should you wish to save yourself a considerable amount of time, money, and the potential of losing the website, I suggest you make a substantial offer. Will was offended by the offer of free advertising money from what they believe is a pirate site.

Will has instructed their attorney to do whatever is legally possible to seize your domain and hold you each financially liable. I ask that you take that into consideration when making your offer.

I can be reached via Skype, email, or telegram. I prefer Skype if possible. As the case progresses feel free to reach out should your position change.

This correspondence and all of its contents is without prejudice to WILL Co., Ltd. or any of their affiliated company's rights and remedies, all of which are expressly reserved.

Looking forward to hearing from you.

Best,

Jason

Jason Tucker

SKYPE: jtucker001

Twitter: @IntelPropHQ

The Copyright & Intellectual Property Podcast

Podcast: <https://iphqs.com/category/podcast/>

The email you have received from this company and individual and any file attachments(s) are confidential and intended solely for use by the identified recipient(s). If you received this message in error, please notify the sender and delete the message and any copies completely from your computer. Distribution or copying of this communication, in whole or in part, by any unauthorized recipient is prohibited and may subject you to liability. All rights reserved.

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 **1.pdf**  
554K

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**Keung Fung** <kfung@awesapp.com>

To: Jason Tucker <jason@battleshipstance.com>

Cc: Spencer Freeman <sfreeman@freemanlawfirm.org>, "kfung426@me.com" <kfung426@me.com>

Thu, Sep 17, 2020 at 3:39 PM

Hello Mr. Tucker,

My company specialize in mobile application and website development. [AVGLE.COM](#) is one of our clients, we customized the AVS engine per their request and set up the server infrastructure on their behalf. As we are not responsible for the operation of the website, please direct any information regarding the operation of AVGLE.com to [admin@avgle.com](mailto:admin@avgle.com). Thank you.

Best Regards,  
Fung

[Quoted text hidden]

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Best Regards<br>Kevin Fung

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**Jason Tucker** <jason@battleshipstance.com>  
To: Keung Fung <kfung@awesapp.com>  
Cc: Spencer Freeman <sfreeman@freemanlawfirm.org>, kfung426@me.com

Fri, Sep 18, 2020 at 3:14 AM

Hello Mr. Fung,

I enjoyed your protest game and respect the intent. Thank you for reaching out. I hope that this finds you safe during this strange time. The data we reviewed appears to display more than just setting up operations. It appears that you are involved in the ongoing operation.

If you are able to provide us with full contact, names, addresses, payment, account, and other information that allows us to accomplish our goals and objectives with the owners and other operators I believe that our client would be willing to not name you in the lawsuit.

In exchange for this usable information we will keep your name confidential. We will keep confidential that you are the source of the information.

Please let us know by end of next week (09/25). We have information coming in the next two weeks from other service providers. We will use that information to amend the complaint and add additional names and begin to serve those parties. We hope that you choose to not be one of them.

The choice is yours and I hope that you choose to help us so that we can help you. I can be reached on Skype (jtucker001) or via email.

Again, thank you.

Best,

Jason

On 2020-09-17 12:39 AM, Keung Fung wrote:

Hello Mr. Tucker,

My company specialize in mobile application and website development.  
[AVGLE.COM](#) [2] is one of our clients, we customized the AVS engine per

[Quoted text hidden]

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Podcast: <https://iphqs.com/category/podcast/> [1]

The email you have received from this company and individual and any file attachments(s) are confidential and intended solely for use by the identified recipient(s). If you received this message in error, please notify the sender and delete the message and any copies completely from your computer. Distribution or copying of this

communication, in whole or in part, by any unauthorized recipient is prohibited and may subject you to liability. All rights reserved.

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Best Regards<br>Kevin Fung

Links:

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[1] <https://iphqs.com/category/podcast/>  
[2] <http://AVGLE.COM>

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Jason Tucker  
+1.310.488.8017  
SKYPE: jtucker001  
[Quoted text hidden]

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**Jason Tucker** <jason@battleshipstance.com>  
To: kfung@awesapp.com

Tue, Sep 22, 2020 at 6:38 AM

Hello,

Quick reminder, you have four days.

Your choice.

Best,

Jason  
[Quoted text hidden]

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**Jason Tucker** <jason@battleshipstance.com>  
To: Keung Fung <kfung@awesapp.com>

Fri, Oct 9, 2020 at 6:57 AM

Hi,

We received a number of responses from service providers. Your name, IP's, and contact information are on everything.

If you like, I can help you out of the situation you are in. Either you own and operate the site at which point we should talk about a deal or I need information and we need to discuss a deal.

Who owns the site?

What is their personal name?

What is their actual address?

If it's not you, why is it only your information on any records?



No reply or attempts to work with me only causes the need to escalate this case. There is a small window to not have yourself named and be held liable for everything.

Please let me know which you choose.

Best,

Jason

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**Keung Fung** <kfung@awesapp.com>  
To: Jason Tucker <jason@battleshipstance.com>

Tue, Oct 13, 2020 at 5:47 PM

Thank you for your email. Like I've said before my company setup the infrastructure on my client's behalf, so I am not surprised you find my name from service operators.

We have nothing to hide, but I could not risk the liabilities revealing my client's details to you, a stranger.

Please contact them by [admin@avgle.com](mailto:admin@avgle.com)

[Quoted text hidden]

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**Jason Tucker** <jason@battleshipstance.com>  
To: Keung Fung <kfung@awesapp.com>  
Cc: Spencer Freeman <sfreeman@freemanlawfirm.org>

Wed, Oct 14, 2020 at 12:22 AM

Hello,

According to all records that I have seen, you did more than set it up. You run the site and its operations. You regularly login. You are the only one who logs in and directs operations. No other name is associated with ANY account. Conveniently when I sent an email to the email you provided, your reply and "their" reply came in minutes apart.

You don't have to reveal anything to me, you can reveal it to the court and authorities, or not. IF the mysterious other owners wish to settle, they could just keep their anonymity by brokering a settlement through you. If we can get this done to the satisfaction of our clients, I do not care if I ever learn the names of others, if they exist.

If you change your mind, I am here.

In the meantime, you are about to become more famous.

[Quoted text hidden]



Virus-free. [www.avg.com](http://www.avg.com)

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**Jason Tucker** <jason@battleshipstance.com>  
To: Keung Fung <kfung@awesapp.com>  
Cc: Spencer Freeman <sfreeman@freemanlawfirm.org>

Tue, Oct 20, 2020 at 6:32 AM

Hello,

The team at Will asked me to send this email to give you a last chance to settle before they name you in the complaint. Concerned that naming you will cause you problems, they wanted to extend the courtesy of saving yourself. I was informed that this is culturally appropriate.

XBiz has published the first story on the case: <https://www.xbiz.com/news/255056/japan-based-will-co-sues-avgle-com-for-copyright-infringement>

The South China Morning Post reached out today seeking more information. I told them any additional information may be found next week.

Will is giving you until the end of the week to settle. If nothing is agreed to in principal the complaint will be amended and include your name. Once amended, I suspect the media tracking outlets will pick it up.

Please let me know which you choose.

Best,

Jason

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**From:** Jason Tucker <jason@battleshipstance.com>  
**Sent:** Tuesday, October 13, 2020 9:23 AM  
**To:** 'Keung Fung' <kfung@awesapp.com>  
**Cc:** 'Spencer Freeman (sfreeman@freemanlawfirm.org)' <sfreeman@freemanlawfirm.org>  
**Subject:** RE: FW: WILL CO Ltd v. Avgle.com, et. al.

Hello,

According to all records that I have seen, you did more than set it up. You run the site and its operations. You regularly login. You are the only one who logs in and directs operations. No other name is associated with ANY account. Conveniently when I sent an email to the email you provided, your reply and "their" reply came in minutes apart.

You don't have to reveal anything to me, you can reveal it to the court and authorities, or not. IF the mysterious other owners wish to settle, they could just keep their anonymity by brokering a settlement through you. If we can get this done to the satisfaction of our clients, I do not care if I ever learn the names of others, if they exist.

If you change your mind, I am here.

In the meantime, you are about to become more famous.

Best,

[Quoted text hidden]

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**Keung Fung** <kfung@awesapp.com>  
To: Jason Tucker <jason@battleshipstance.com>  
Cc: Spencer Freeman <sfreeman@freemanlawfirm.org>, admin@avgle.com

Fri, Oct 23, 2020 at 8:18 PM

特此聲明：

[avgle.com](http://avgle.com)(客戶)是Awesapp Limited(本公司)的客戶。本公司僅提供網頁開發，根據客戶要求，為客戶開發網站、伺服器架設、網站維護、提供技術支援等，本公司並沒有參與網站的營運，所有網站營運、決策、網站擁有權、營收、法律責任一律與本公司及旗下員工無關！

根據合約雙方承認並同意，客戶將擁有網站上的所有知識產權，包括但不限於版權、商標權和任何用戶上傳的內容。開發人員同意在網站完成並交付給客戶之前或之後的任何時間不主張對網站知識產權的任何此類所有權。

本公司沒有權力及義務，為客戶處理任何金錢糾紛、和解協議。基於私隱條例，本公司亦不會向第三方披露任何客戶的資料，請自行聯絡客戶。

本公司已經再三強調並不是此網站的營運團隊，如閣下繼續誣捏誹謗、恐嚇勒索、以任何形式誤導公眾，以致本公司及員工有任何損失，包括但不限於金錢、名譽、精神等損失，本公司必定會向閣下(Jason Tucker, WILL Co Ltd, Spencer Freeman)追討濫用司法程序的責任以及一切賠償！

本公司已再三表明我們立場，這將是我們最後一次回應你的查詢！我們將來拒絕回覆您不得被解讀成為任何形式的承認。

The Company reserves all rights to seek responsibility and compensation from you (Jason Tucker, WILL Co Ltd, Spencer Freeman) for abuse of process!

This will be our last communication with you and our future refusal to respond to your communications is not to be construed as an admission of any kind.

Awesapp Limited

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